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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

QUINCI L. GREENE, Plaintiff and Appellant, v. COUNTY OF ALAMEDA, Defendant and Respondent.	A155897 (Alameda County Super. Ct. Nos. RG18897573 & RG18897584)

Quinci L. Greene[1] appeals from the trial court's order of dismissal after it sustained the County of Alameda's (County) demurrer to his first amended complaint without leave to amend. We conclude the notice of appeal was not timely filed and dismiss the appeal.

I. FACTUAL AND PROCEDURAL BACKGROUND

After a traffic stop, Bey was arrested and taken to the Glenn E. Dyer Detention Facility in Alameda County. When he was denied admittance at Glenn Dyer, Bey was taken to Santa Rita Jail, where he was later incarcerated for four days before being released.

On March 20, 2018, Bey filed a complaint in *Bey v. Santa Rita Jail* (case No. RG18897573), alleging he sustained $19 million in compensatory damages as a result of his false arrest, unlawful search and seizure, and prolonged detention from

[1] Plaintiff filed his complaint as "authorized representative for Quinci L. Greene." Plaintiff states his correct name is "Raq Bey." Throughout this opinion, we will refer to him as Bey.

October 31 to November 4, 2017. Bey also filed a complaint in *Bey v. Glenn Dyer Detention Facility* (case No. RG18897584) based on the same events. The County filed demurrers to both complaints. On May 24, 2018, Bey filed a one-page opposition to the County's demurrer and filed amended complaints in both cases. On June 27, 2018, the trial court consolidated case No. RG18897573 with case No. RG18897584 for all purposes and designated case No. RG18897573 as the lead case, directing that all pleadings be filed in the lead case. The trial court dropped the County's demurrers as moot given the filing of Bey's first amended complaints.

On July 23, 2018, the County filed a demurrer as to both first amended complaints in the lead case. In response, Bey filed a second amended complaint, and subsequently moved for leave to do so.

On September 13, 2018, the trial court sustained the County's demurrer without leave to amend and struck Bey's second amended complaint. The court's order sustaining the demurrer referenced both case No. RG18897573 and case No. RG18897584 and noted the cases were consolidated. The last page of the order contains a handwritten order of dismissal stating, "The Second Amended Complaint filed without leave of court is stricken. Case dismissed with prejudice. JS [(initials of Judge Julia Spain)] Defendant's request for judicial notice is granted." A filed-endorsed copy of that order was served by the superior court clerk on September 14, 2018. Notice of entry of judgment was filed and served by the County on September 18, 2018.

On September 18, 2018, Bey filed a "Motion to Reconsider Tentative Ruling." On November 8, 2018, the trial court denied Bey's motion for reconsideration on the grounds the trial court lacked jurisdiction to reconsider its ruling and the motion was procedurally and substantively deficient. On November 27, 2018, Bey appealed the "Judgment of dismissal after an order sustaining a demurrer."

II. DISCUSSION

After requesting supplemental briefing from the parties, we conclude we lack jurisdiction to consider this appeal because Bey did not timely file his notice of appeal.

California Rules of Court, rule 8.104(a) provides in pertinent part as follows: "*Unless a statute or rule*[] *8.108 . . . provide*[] *otherwise*, a notice of appeal must be filed on or before the earliest of: [¶] (1) [¶] (A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, showing the date either was served; [¶] (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or [¶] (C) 180 days after entry of judgment." (Italics added.)

California Rules of Court, rule 8.108(e) provides in relevant part as follows: "*If any party serves and files a valid motion to reconsider an appealable order under Code of Civil Procedure section 1008, subdivision (a)*, the time to appeal from that order is extended for all parties until the earliest of: [¶] (1) 30 days after the superior court clerk, or a party serves an order denying the motion or a notice of entry of that order; [¶] (2) 90 days after the first motion to reconsider is filed; or [¶] (3) 180 days after entry of the appealable order." (Italics added.)

Our jurisdiction to hear Bey's present appeal requires strict compliance with the time period for filing notices of appeal established by California Rules of Court, rules 8.104 and 8.108. Timely filing of the notice is an indispensable prerequisite to the appellate court's power to entertain the appeal. (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56.) Except for certain public emergencies, we have no authority to excuse a tardy notice of appeal. (Cal. Rules of Court, rule 8.104(b); *Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 674.)

Here, the superior court clerk served a filed-endorsed copy of the order dismissing the consolidated case[2] on all parties on September 14, 2018. Thus, unless extended by

[2] A written order of dismissal signed by the court and filed in the action constitutes a judgment effective for all purposes. (Code Civ. Proc, § 581d.)

operation of California Rules of Court, rule 8.108(e), Bey had until Tuesday, November 13, 2018 —the 60th day after September 14, 2018—to file his notice of appeal.[3] (Cal. Rules of Court, rule 8.104(a)(1)(A); *Hughes v. City of Pomona* (1998) 63 Cal.App.4th 772, 776–777.) His notice of appeal was not filed until November 27. If rule 8.108(e) applied, it would have extended the deadline for Bey to file his notice of appeal until well after November 13, 2018, no matter which of the three potential deadlines described in the rule was considered the earliest. The issue before us is whether Bey's motion for reconsideration was in fact "a valid motion to reconsider an appealable order under Code of Civil Procedure section 1008, subdivision (a)" for purposes of rule 8.108(e). It was not.

The word "valid" as used in California Rules of Court, rule 8.108(e) means " 'the motion or notice complies with all procedural requirements[, but] does not mean that the motion or notice must also be substantively meritorious.' " (*Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1047, italics omitted.) Numerous cases hold a motion to reconsider is not valid, and does not operate to extend the time to appeal, if it is filed *after the final judgment is signed*. (*Id.* at p. 1048; *Ten Eyck v. Industrial Forklifts Co.* (1989) 216 Cal.App.3d 540, 545; *Safeco Ins. Co. v. Architectural Facades Unlimited, Inc.* (2005) 134 Cal.App.4th 1477, 1481–1482.) The signed judgment of dismissal in this case was entered on September 13, 2018. Bey's notice of motion and motion for reconsideration was filed five days *after* entry of the judgment. Under the case law, it was not a valid motion for reconsideration under rule 8.108(e) and it did not operate to extend the time for Bey to file his notice of appeal.[4]

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[3] In addition, the County served notice of entry of judgment on September 18, 2018. Even if *that* date triggered the time to appeal under California Rules of Court, rule 8.104(a)(1)(B), the 60-day period would have expired on November 19, 2018, over a week before Bey filed his notice of appeal on November 27, 2018.

[4] We also note Bey's motion for reconsideration improperly sought to have the court reconsider its "tentative ruling." As the trial court correctly observed, the tentative ruling is not a court order, and was superseded by the court's order on the demurrer entered on September 13, 2018.

While appellate courts have on rare occasions decided to treat postjudgment motions for reconsideration as motions for a new trial, no party has argued we should do so here. Furthermore, the general rule is that appellate courts "should not construe a motion expressly identified as being a particular motion to be an entirely different motion in the appellate court" absent a showing of "extremely good cause." (*Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1608, 1610 [finding extremely good cause due to earlier decisions approving of procedure used by plaintiff].) No such showing of "extremely good cause" has been made here.

In his supplemental brief, Bey cites California Rules of Court, rule 8.60 governing applications to extend time in the Court of Appeal, but that rule does not allow this court to extend the time to file a notice of appeal. (Cal. Rules of Court, rules 8.60(d), 8.104(b).)

The fact Bey is a pro se litigant does not constitute good cause to save his untimely appeal. "Under the law, a party may choose to act as his or her own attorney. [Citations.] '[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]' [Citation.] Thus, as is the case with attorneys, pro. per. litigants must follow correct rules of procedure." (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.)

Because the notice of appeal was not filed within the 60 days allowed by California Rules of Court, rule 8.104(a) and the 60-day period was not extended by Bey's invalid, postjudgment motion for reconsideration, the appeal is untimely and must be dismissed.

III. DISPOSITION

The appeal is dismissed. The parties are to bear their own costs on appeal.

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Margulies, J.

We concur:

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Humes, P. J.

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Banke, J.

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